

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

**Gregory Scott
Edward A. Garvey
Joel Jacobs
Marshall Johnson
LeRoy Koppendrayer**

**Chair
Commissioner
Commissioner
Commissioner
Commissioner**

**In the Matter of Northern States Power
Company's Petition for Certification to the
Securities and Exchange Commission
Regarding Investments in Foreign Utility
Companies and Exempt Wholesale
Generators**

ISSUE DATE: March 26, 2001

DOCKET NO. E-002/M-00-1553

**ORDER GRANTING CERTIFICATION
WITH CONDITIONS**

PROCEDURAL HISTORY

On March 10, 1998, the Commission approved providing a certification to the Securities and Exchange Commission regarding investments in foreign utility companies (FUCOs) by the former Northern States Power Company (NSP) ¹ or its current or future affiliates up to a dollar limit of \$500 million subject to certain conditions.²

On November 15, 2000, NSP requested two certifications by the Commission to the Securities and Exchange Commission (SEC). The first certification (the 100 Percent Certification) relates to Xcel Energy Inc.'s³ request to make investments in exempt wholesale generators (EWGs) and foreign utility corporate organizations (FUCOs) in an amount up to 100 percent of its consolidated retained earnings. The second certification requested (the SPS Restructuring Certification) is related to a future transfer by Southwestern Public Service Company (SPS) (an affiliated public utility providing electric service in New Mexico, Texas, Kansas and Oklahoma) of its generating assets in response to electric utility restructuring laws in Texas and New Mexico.

¹ Prior to the merger between New Century Energies, Inc.(NCE) and NSP. Merger approved, as conditioned, by the Commission in its June 12, 2000 Order in Docket No. E,G-002/PA-99-1031.

² Ordered by the Commission in Docket No. E-002/S-97-1652, March 10, 1998.

³ Xcel Energy Inc. is a registered holding company formed as a result of the merger between Former NSP and New Century Energies, Inc.

On January 16, 2001, the Department of Commerce (DOC) submitted comments.

On January 25, NSP submitted reply comments.

This matter came before the Commission on March 7, 2001.

FINDINGS AND CONCLUSIONS

I. NSP's Petition

A. The 100 % Certification Request

Xcel Energy Inc. (Xcel Energy), the registered holding company parent of NSP, has pending before the SEC its request to invest in EWGs and FUCOs in an amount up to 100% of its consolidated retained earnings. NSP requests that the Commission certify to the Securities and Exchange Commission (SEC) that the Commission has reviewed the proposal and determined that:

- (1) the Commission has the authority and resources to protect the ratepayers subject to its jurisdiction;**
- (2) it intends to exercise its authority; and**
- (3) it does not object to the SEC's granting of authority to Xcel Energy to invest in FUCOs and EWGs in an amount up to 100 % of its consolidated retained earnings.**

NSP also requests that the \$500 million limit on FUCO investments, previously set by the Commission, be replaced with the 100% of consolidated retained earnings investment threshold on FUCOs and EWGs combined.

B. The SPS Restructuring Certification Request

NSP requests that the Commission issue a statement that Excel Energy can submit to the SEC, in connection with a future filing, requesting authority to invest in EWGs above the 100 percent limit due to the reclassification of the generation assets of SPS to become EWGs. NSP makes this request in response to restructuring mandates in Texas and New Mexico. NSP requests that the Commission's statement indicate that allowing the generation assets of SPS to become EWGs:

- 1. will benefit customers;**
- 2. is in the public interest;**
- 3. does not violate state laws.**

II. Background

At the time of the merger of former NSP and New Century Energies, Inc., in August, 2000, Xcel Energy's aggregate equity investment in EWGs and FUCOs was \$1.2 billion and constituted 54% of Xcel Energy's average consolidated retained earnings of \$2.226 billion. Although SEC rules provide for a safe harbor of 50% of retained earnings to be invested in EWGs and FUCOs, Xcel Energy's 54% threshold was grandfathered in by the SEC in its order, dated August 16, 2000, approving the merger.

The certification being requested is to permit Xcel Energy to expand its investments in EWGs and FUCOs beyond the current 54% of consolidated retained earnings as well as the \$500 million FUCO limit previously set by the Commission.

Xcel Energy has several subsidiaries that hold EWGs or FUCOs. These subsidiaries include two intermediate holding companies: Xcel Energy International Group, Inc. (Xcel International) and Xcel Energy Wholesale Group, Inc. (Xcel Wholesale). Each of these subsidiaries has equity investments in FUCOs and/or EWGs. None of these investments have any effect on NSP's retail ratepayers.

III. Legal Standards

The Public Utility Holding Company Act (PUHCA), Sections 32 and 33, provides exemptions for the ownership and operation of EWGs and FUCOs. The SEC implemented these sections, in part, by adopting Rule 53.⁴

The SEC rule provides for a safe harbor of 50% of retained earnings to be invested in EWGs and FUCOs but provides that registered companies can seek authorization beyond the safe harbor limit. If the safe harbor limit of 50% under SEC Rule 53(a) will be exceeded, a registered holding company may obtain SEC financing authorization if it can, under SEC Rule 53(c), affirmatively demonstrate that its proposed investments: (i) will not have a substantial adverse impact upon the financial integrity of the registered holding company system; and

(ii) will not have an adverse impact on any utility subsidiary of the registered holding company, or its customers, or on the ability of State commissions to protect such subsidiary or customers. The SEC has requested certification from the State Commissions to meet the requirements of (ii), above.

⁴ SEC Rules 250.53.

IV. Comments of the Parties

A. NSP

NSP stated that in the event Xcel Energy were to invest in EWGs and FUCOs in an amount up to 100% of its consolidated retained earnings, such amount would represent approximately 17.2% of Xcel Energy's total capitalization as of June 30, 2000. Prior to the merger with

New Century Energies, NSP's aggregate equity investment in EWGs and FUCOs was approximately 11.6% of the total capitalization of the former NSP.

NSP indicated that investments in FUCOs and EWGs will have no impact on NSP's utility operations, in part due to the corporate structure of Xcel Energy. The entities holding EWGs and FUCOs are separate from NSP's utility operations and not in the chain of ownership of NSP.

In addition to commitments made in its merger proceeding, NSP commits that neither NSP nor any current or future subsidiary or affiliate will seek to recover either directly or indirectly from Minnesota ratepayers through regulated utility rates any costs or expenses associated with any investment in any FUCO or EWG, other than an EWG that has been approved by the Commission to sell power to NSP.

B. DOC Comments

The DOC stated that the Commission's authority under Minn. Stat. § 216B is fully adequate to protect Minnesota ratepayers' interests with respect to these investments. The DOC agrees that NSP customers will see no change in their utility service as a result of potential acquisitions up to the 100% retained earnings level. Further, in future NSP rate cases, the Commission will have the opportunity to investigate any significant transactions between NSP, Xcel and other affiliated interests to verify the accuracy and propriety of all charges.

The DOC recommended that the Commission make the certification requested by NSP, regarding the 100% Certification, with certain limitations and conditions.

C. Areas of Agreement between the Parties

NSP, in its reply comments, indicated that the DOC and NSP had agreed to certain limitations and conditions in the certification. They also agreed to annual reporting requirements for NSP rather than more frequent reporting.

NSP requested, with no objection from the DOC, that NSP's request for certification regarding the SPS Restructuring Certification be denied, without prejudice. NSP made this request due to changing requirements in the deregulating states.

V. Commission Action

The Commission finds and will certify that the Commission's authority under Minn. Stat. § 216B is fully adequate to protect Minnesota ratepayers' interests with respect to the FUCO and EWG investments and that it intends to exercise that authority. The Commission has authority to set NSP rates, approve or disapprove NSP's capital structure and approve or disapprove any affiliated interest arrangements. Clearly, this authority is adequate to protect Minnesota ratepayers. Further, the Commission has adequate staff and resources to protect ratepayers' interests.

The Commission will further certify that it does not object to the SEC's granting Xcel Energy authority to invest in EWGs and FUCOs in an amount up to 100% of its consolidated retained earnings. Xcel's projected foreign utility investments are reasonable. Even if Xcel invested 100% of its consolidated retained earnings in FUCOs and EWGs, such amount would represent approximately 17.2% of Xcel's total capitalization. This, compared with the 11.6% of total capitalization of former NSP prior to the merger, is not unreasonable. In addition, NSP's commitment to the Commission that neither NSP nor any current or future subsidiary or affiliate will ever seek to recover either directly or indirectly from Minnesota ratepayers through regulated utility rates any costs or expenses associated with any investment in any FUCO or EWG, other than an EWG which has been approved by the Commission to sell power to NSP, further supports the Commission's decision.

Pursuant to the parties request, the Commission will deny, without prejudice the SPS Restructuring Certification.

ORDER

1. The Commission certifies that it has the authority and resources to protect ratepayers subject to its jurisdiction and that it intends to exercise that authority. The Commission does not object to the SEC's granting authority to Xcel Energy to invest in EWGs and FUCOs in an amount up to 100 percent of its consolidated retained earnings.

The Commission's certification is subject to the following conditions and limitations:

- A. Xcel will not encumber any Minnesota property because of these foreign investments.
- B. NSP shall file with the Commission an annual report on all Xcel and subsidiary EWG and FUCO investment (Annual Report) to be filed one year from the date of Commission approval. This Annual Report shall contain the following information:

1. Xcel's total EWG and FUCO investment to date by subsidiary and country;
2. a list of all outstanding bonds issued for and secured by any foreign investment acquired by Xcel or its subsidiaries;
3. copies of all SEC orders relating to Xcel's EWG and FUCO investments;
4. the ratio of Xcel's total EWG and FUCO investments relative to Xcel's total assets and capitalization;
5. the ratio of Xcel's total EWG and FUCO investments relative to Xcel's consolidated retained earnings.

C. The certification is conditioned on and subject to being removed or withdrawn by the Commission as to any future EWG and FUCO investments if the Commission deems such action is warranted.

2. The SPS Restructuring Certification is denied, without prejudice.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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